

## CHAPTER IV – SUBDIVISION APPLICATION AND REVIEW PROCESS

### Chapter Overview

This chapter describes the subdivision review process, from pre-application meeting to final plat approval in accordance with the Montana Subdivision and Platting Act, [Title 76, Chapter 3, MCA \(“MSPA”\)](#). There are two main parts to this chapter:

- Preliminary plat application and review process, and
- Final plat application and review process.

All subdivision applications must be reviewed according to the applicable processes set forth in this chapter. All subdivision applications are reviewed as either major subdivisions or minor subdivisions, as defined in Chapter III. There are procedural differences between major and minor subdivisions related to time periods for review, public hearing requirements, and whether the planning board is involved. A subdivision is not complete and lots may not be transferred until the final plat has been approved and filed with the Clerk and Recorder as per [76-3-301, MCA](#).

This chapter also covers the process for requesting and receiving variances as part of a preliminary plat application, the processes to be followed when changes are made to an application, the process for considering new information after the planning board has reviewed a preliminary plat application, as well as the procedural requirements for phased developments.

### IV-A Preliminary Plat Application and Review Process

#### 1. Pre-Application

- a) The applicant shall submit completed pre-application materials to the Administrator as described in Chapter V.
- b) Within 30 days of receipt of the submittal, the Administrator shall schedule a meeting with the applicant or designated representatives to discuss the pre-application materials. At the meeting the Administrator shall:
  - i. Identify state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision proposed;
  - ii. Alert the applicant to potentially significant adverse impacts based on the subdivision review criteria in [76-3-608, MCA](#);
  - iii. Provide a list of the public utilities, agencies of local, state, and federal government, and any other entities that shall be contacted by the applicant for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond;
  - iv. Establish a time limit after a pre-application meeting by which an application must be submitted; and

- v. Provide the applicant with a list of information, documents, fees, and other materials explaining what must be submitted with a preliminary plat application. The identification of this information by the Administrator does not limit her/his ability to require additional information at a later time.
- c) The Administrator may invite to the meeting representatives of affected public utilities and review agencies at the local, state, and federal levels including, but not limited to, the local sanitarian, DEQ reviewer, clerk and recorder, and representatives from the public works department, fire department, law enforcement and others to provide preliminary comments related to their agency's purview.
- d) If a preliminary plat application or request for a pre-application extension is not received within six months of the pre-application meeting, the pre-application meeting is void and must be repeated. Requests for an extension shall be made to the Administrator, who may approve one extension for up to six months. The Administrator shall notify the applicant in writing of a decision to approve or deny an extension. If denied, the reason for denial shall be included in the notice.
- e) By requesting a pre-application meeting, the applicant agrees not to begin construction of subdivision-related improvements prior to approval of the preliminary plat application. Subdivision-related improvements include water, wastewater, stormwater, and solid waste facilities; utilities, roads, streets and any improvement requiring grading or earth moving. All historic, cultural, archeological and natural resources shall remain unaltered, including riparian vegetation and wetlands. The following activities are permitted prior to preliminary plat approval:
  - i. Work related to testing, analytical, or monitoring activities that may be required by these regulations or are relevant to the processing of the subdivision application; and
  - ii. Activities approved in advance and in writing by the Administrator that qualify as actions that are not subdivision related.
- f) **[INSERT THE NAME OF THE CITY OR COUNTY]** shall not be responsible if improvements or alterations must be eradicated, moved, repaired, or rebuilt due to a applicant making improvements prior to and/or not in accordance with the requirements of these regulations or the conditions of preliminary approval. In such situations the applicant may be subject to the enforcement provisions and penalties described in Chapter I of these regulations, and the restoration of any resource that has been altered may be required as a condition of preliminary plat approval.

## 2. Preliminary Plat Submittal

- a) The applicant shall provide all required preliminary plat elements identified in Chapter V of these regulations to the Administrator. The application materials should address comments and questions raised during the pre-application meeting, including information on potential adverse impacts to agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, including how these potentially significant adverse impacts will be avoided or mitigated. If the development is proposed to be phased, the application must provide information identifying all phases of the development, including a schedule for when the applicant plans to submit for review of each individual phase of the development.
  - i. When a subdivision is located in an incorporated area but proposed to be annexed into a city or town, the applicant shall submit the preliminary plat application to the Administrator for the city or town. The municipal government shall review the preliminary plat and annexation applications.

- ii. When a subdivision is located partly within a municipality and partly within the unincorporated county, and only a portion of the property is proposed to be annexed into the city or town, the applicant shall submit the preliminary plat application to both the Administrator for the city or town and the Administrator for the county. Both the municipal and county governing bodies shall review and issue decisions on the application.
- b) The applicant shall include all correspondence with utilities, agencies and service providers identified through the pre-application process with the preliminary plat application materials. It is recommended that the applicant communicate with neighboring property owners early in the process to address any potential concerns that may arise, and documentation of this correspondence, if conducted, should be included with the preliminary plat materials.
- c) When a subdivision is proposed to deviate from any of the design standards in Chapter VII, the preliminary plat application must include a request for variance in accordance with the requirements of Chapter V.
- d) Once a preliminary plat application has been submitted, the Administrator, governing body, planning board, Affected agencies and service providers may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the applicant and to subsequently monitor compliance with any conditions of preliminary plat approval until the final plat is approved. The submission of a preliminary plat application constitutes a grant of permission by the applicant.

### 3. Element Review

- a) Timeframe and Process. A preliminary plat application is considered to be received on the date of delivery to the Administrator and when accompanied by the proper review fee.
  - i. Within five working days of receipt, the Administrator shall determine whether the application contains all of the required elements listed in Chapter V and indicated during the pre-application meeting. The Administrator shall provide written notice to the applicant of the determination and identify any missing elements and the timeframe in which they must be submitted.
  - ii. When a missing element is submitted by the applicant, the five working day timeframe for review begins again. This process shall be repeated until Administrator provides written notice to the applicant that the application contains all required elements. If the applicant fails to submit the required information within six months, the application is terminated and the applicant must reapply. The Administrator may grant one six-month extension to this requirement.
- b) If the applicant alters the preliminary plat application during element review, the five working-day review period is suspended and the Administrator may require additional materials to clarify the proposed amendment including but not limited to a revised application form, preliminary plat, additional review fees, or documentation of potential impacts and mitigate. The five working-day review period resumes when the Administrator notifies the applicant that the application contains all required elements addressing the amendments proposed.
- c) If the subdivision regulations change during element review, the determination of whether the application contains the required elements shall be based on the new regulations.
- d) In the event a preliminary plat application differs so greatly from the plans submitted at the pre-application stage, the Administrator may require the applicant go through a new pre-application process reflecting the current plans.

#### 4. Agency Review

- a) Agency review may occur throughout the review process and may be initiated by the applicant, the Administrator, or an agency representative. Agency comments received at any time will be included in the files and records for the subdivision. Comments will be included in the staff report, planning board recommendation, and governing body decision.
- b) After determining the application includes all required elements, the Administrator shall provide a summary of the application and preliminary plat to those utilities, federal, state, and local government agencies, and service providers identified during the pre-application meeting. The Administrator may also notify others who may have a substantial interest in the subdivision such as a property owners association.
- c) When the property to be subdivided lies within a rural school district, the Administrator shall provide a summary of the information contained in the application and preliminary plat to the rural school district superintendent for distribution to the school district trustees for comment (pursuant to [20-9-615, MCA](#)).
- d) If during the review of the application, the Administrator contacts a public utility, agency, or other entity that was not included on the list originally made available to the applicant, the Administrator shall notify the applicant of the contact and timeframe for response (pursuant to [76-3-504\(1\)\(g\)\(iii\), MCA](#)).
- e) The Administrator shall provide the applicant with copies of all comments received.
- f) If the applicant makes substantial changes to the application during subsequent stages of the review process, the Administrator may seek additional comments from agencies and others.
- g) A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body (pursuant to [76-3-504\(1\)\(i\), MCA](#)).
- h) If a federal or state government entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment, the comment or opinion may be included in the governing body's written statement under [76-3-620, MCA](#) only if the comment or opinion provides scientific information or a published study that supports the comment or opinion.
- i) Federal or state entities that have been involved in an effort to acquire or assist others in acquiring an interest in the real property of the proposed subdivision are required to disclose that information prior to submitting comments, opinion, or information.
- j) Coordination Between Counties and Municipalities.
  - i. When a proposed subdivision lies within one mile of a third-class city or town, within two miles of a second-class city, or within three miles of a first-class city, the Administrator shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment (pursuant to [76-3-601\(2\)\(b\), MCA](#)).
  - ii. When any portion of a proposed subdivision is intended to be annexed, the governing bodies of both the city and county shall coordinate annexation and subdivision procedures to minimize duplication of hearings, reports, and other requirements when possible. In general, it is recommended that the city and county Administrators meet to discuss the proposed annexation and subdivision, overlapping issues, and make a recommendation on coordination to their respective governing bodies. The most coordinated approach is a joint review,

with one staff report prepared for both jurisdictions, joint planning board hearings, and joint governing body meetings or hearings.

- iii. If joint review is not conducted, each jurisdiction may conduct separate, concurrent reviews of the proposed subdivision application. If the governing bodies of the city and county grant approval or conditional approval of the subdivision to be annexed, the county shall approve the subdivision with a condition of annexation, and the municipality shall approve the annexation prior to approval of the subdivision application.

## 5. Sufficiency Review

### a) Timeframe and Process.

- i. Within 15 working days of notifying the applicant that the application contains all required elements, the Administrator shall determine whether the application contains detailed, supporting information that is sufficient to allow for a comprehensive review of the proposed subdivision.
  - ii. The Administrator shall provide written notice to the applicant of the determination, identifying any deficiencies and information needed for the application to be sufficient and the timeframe in which additional information must be submitted.
  - iii. When a missing element is submitted by the applicant, the 15 working day timeframe for review begins again. This process shall be repeated until Administrator provides written notice to the applicant that the application contains detailed, supporting information that is sufficient to allow for review of the application. If the applicant fails to submit the required information within six months, the application is terminated and the applicant must reapply. The Administrator may grant one six-month extension to this requirement.
- b) If the applicant alters the preliminary plat application during sufficiency review, the 15 working-day review period is suspended. The Administrator shall determine whether the change materially alters the application submittal and if so, may require additional materials to clarify the proposed amendment including but not limited to a revised application form, preliminary plat, additional review fees, or documentation of potential impacts and mitigate. The 15 working-day review period resumes when the Administrator notifies the applicant that the application is sufficient for review.
- c) If the subdivision regulations change during sufficiency review, the determination of whether the application is sufficient shall be based on the new regulations.
- d) A determination that an application contains sufficient information to allow for review does not ensure the application will be approved or conditionally approved, nor does it limit the ability of the Administrator, planning board, or governing body to request additional information during the review process. A determination of sufficiency also does not limit DEQ, the local sanitarian, or other agencies with permit authority to require additional information during their reviews.

## 6. Application Review

- a) Once the application has been deemed sufficient, the local government's statutory review period for a decision begins. The review period begins the day after the Administrator provides written notification to the applicant that the application is sufficient for review. The timeframes in which the governing body must make a decision to approve, approve with conditions, or deny the preliminary plat application are as follows:

- i. 35 working days for a minor subdivision;
  - ii. 60 working days for a major subdivision with less than 50 lots; and
  - iii. 80 working days for a major subdivision with 50 or more lots.
- b) The applicable review period may be extended or suspended by up to one year upon mutual consent of the applicant and the Administrator. Amending an application after it has been determined to be sufficient constitutes the applicant's consent to an extension of the review period. The review period is also extended if a subsequent public hearing is required.
- c) If the applicant changes the application after the Administrator determines the application is sufficient for review but prior to the governing body's decision, the subdivision may be considered amended and require additional consideration based on the following factors.
  - i. Clarifying information that is submitted in response to a question posed by the Administrator, planning board, or governing body and which does not constitute a material change to the application will not be considered an amendment.
  - ii. In determining whether a change is material the Administrator will use the criteria identified in Chapter VI- C. Within five working days of receiving amendment materials the Administrator shall notify the applicant in writing that:
    - The change is not material and the review may proceed;
    - The change is material, requiring a change to the staff report, but the review may proceed; or
    - The change is material and of such significance that the application reverts back to sufficiency determination.
  - iii. By amending the application, the applicant consents to a suspension of the review period. The Administrator may extend the review period by up to 30 working days to allow for rescheduling a public hearing or meeting, to provide public notice, or to amend the staff report as may be necessary.

## 7. Staff Report

- a) The Administrator shall prepare a report evaluating the preliminary plat application for compliance with these regulations. The staff report shall contain:
  - i. A recommendation for approval, conditional approval (including any conditions and mitigation measures), or denial of the preliminary plat application;
  - ii. A summary providing the basis for the recommendation including findings of fact that describe the factual evidence and analysis of compliance with the review criteria (Chapter V) and submittal requirements (Chapter VI) ;
  - iii. A summary of conditions of approval necessary to ensure significant adverse impacts identified through the review process are mitigated and to ensure compliance with state, local, and federal regulations, including these regulations, prior to final plat approval;
  - iv. A recommendation for approval or denial of any variance requests, including any conditions of approval and a summary of facts forming the basis for the recommendation;
  - v. An account of all agency and public comments received, including those provided with the subdivision application materials.
- b) The Administrator shall submit the staff report to the applicant and governing body at least five working days prior to the governing body's meeting on the application for a minor subdivision. For a major subdivision, the Administrator shall submit the staff report to the planning board and applicant at least 15 working days prior to the public hearing.



## 8. Public Notice and Comment

- a) The Administrator shall be responsible for providing public notice as follows:
  - i. All major subdivisions require a public hearing before the planning board and a public hearing before the governing body (unless exempt per [76-3-616, MCA](#)). Notice of the planning board hearing shall be in conformance with the requirements of [76-3-605\(3\), MCA](#). For any additional meetings of the planning board or governing body on an application, notice shall be posted a minimum of 48 hours in advance in accordance with the policies of [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#).
  - ii. Minor subdivisions are considered at a public meeting of the governing body where public comment shall be allowed. Notice of the meeting must be posted a minimum of 48 hours in advance of the hearing in accordance with the policies of [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#).
  - iii. The Administrator may post notice of any public hearing related to a proposed subdivision on the subject property and may also post notice of the hearing and materials related to the application on the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) website or other digital media.
- b) Public comment will be accepted at any point in the subdivision review process and at all public hearings and meetings. Comments received will be considered in the staff report, planning board recommendation, and governing body decision.
  - i. Written comments regarding the application shall be submitted to the Administrator, who shall keep a record of comments and include them in the files and records for the subdivision. The Administrator will transmit all written public comments to the applicant and the planning board and governing body, as applicable.
  - ii. The planning board and governing body will review and consider all public comments prior to making a recommendation or decision on the application.
  - iii. Following preliminary approval and when DEQ or local sanitation approval is required, the applicant shall, as part of the application for sanitation approval, forward a summary comments to the sanitation reviewer.

## 9. Planning Board Hearing and Recommendation

- a) The planning board shall review, hold a public hearing, and make a recommendation on all major subdivisions except those exempted under [76-3-616, MCA](#). The planning board delegates the responsibility for reviewing minor subdivisions to the Administrator.
- b) Public Hearing Requirements.
  - i. The planning board shall hold a public hearing separate from the governing body's public hearing on all major subdivisions, with public notice provided as described in Ch. IV-A(8) above.
  - ii. Public hearings shall be conducted as provided in the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) Growth Policy.
  - iii. Unless otherwise established in the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) Growth Policy, the planning board shall conduct all business on the subdivision during the public hearing or if necessary, continue the hearing to another date. Notice of the continued hearing must be posted at least 48 hours in advance.

- iv. When a major subdivision is exempt from planning board review pursuant to 76-3-616 but requires a variance to these regulations, a separate public hearing shall be required to consider the variance request only.
- c) Planning Board Consideration and Recommendation. The planning board shall evaluate the proposed subdivision under the review criteria in Chapter V, taking into consideration the preliminary plat application, staff report, variance request (when applicable), any additional information submitted and all public comments received. The planning board shall make a recommendation to the governing body to approve, conditionally approve, or deny the subdivision based on established findings of fact that support the recommendation. The board's recommendation shall be provided in writing to the applicant and the governing and include:
  - i. Recommended findings of fact that describe the factual evidence and analysis of compliance with the submittal requirements and review criteria;
  - ii. Recommended conditions and mitigation measures;
  - iii. Disclosure of any preferences for mitigation expressed by the applicant to the planning board;
  - iv. A recommendation for approval or denial of any variance requests, including any conditions of approval and a summary of facts forming the basis for the recommendation;
  - v. An account of all agency and public comments received during the public hearing process;
  - vi. The staff report as submitted to the planning board; and
  - vii. Meeting minutes.

The Administrator shall compile the items listed above following the planning board hearing and submit the materials to the planning board chair for approval. Once approved, the Administrator shall submit the package to the governing body and applicant within 10 working days.

## 10. Governing Body Meeting or Hearing and Decision

- a) The governing body shall review, hold a public hearing, and make a determination on all major subdivisions except those exempted under [76-3-616, MCA](#). The governing body shall hold a public meeting on all minor subdivisions pursuant to these regulations and [76-3-609\(2\)\(e\), MCA](#).
- b) Public Meeting and Hearing Requirements.
  - i. The governing body shall hold a public hearing separate from the planning board's public hearing on all major subdivisions, with public notice provided as described in Ch. IV-A(8) above.
  - ii. Public hearings shall be conducted as provided in the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) Growth Policy.
  - iii. Unless otherwise established in the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) Growth Policy, the governing body shall conduct all business on the subdivision during the public hearing or if necessary, continue the hearing to another date. Notice of the continued hearing must be posted at least 48 hours in advance.
  - iv. When a major subdivision is exempt from review pursuant to 76-3-616 but requires a variance to these regulations, a separate public hearing shall be required to consider the variance request only.



- c) Required Mitigation of Impacts.
  - i. The governing body may require mitigation measures through conditions to minimize potentially significant adverse impacts identified under the review criteria in Chapter V. When requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land.
  - ii. The governing body shall consult with the applicant and shall give due weight and consideration to the expressed preference of the applicant. The applicant shall express preferred mitigation no later than at the governing body's hearing or meeting; it is recommended the applicant submit mitigation measures as early in the review process as possible to allow for proper consideration.
  - iii. The governing body is not required to accept the applicant's preferred mitigation. In some instances, the impacts of a proposed development may be unacceptable and shall preclude approval of the subdivision.
- d) New Information Submitted.
  - i. If new information is presented at the governing body's hearing for a major subdivision, the governing body shall consider the new information in accordance with the criteria set forth in Chapter VI to determine if the information represents or results in a material change to the proposed subdivision.
  - ii. If the information or analysis of information was presented at the planning board hearing and the public has had a reasonable opportunity to examine and comment on the new information, the governing body shall proceed with its decision to approve, conditionally approve, or deny the proposed subdivision.
  - iii. When new information, comments, or documents are presented following the planning board public hearing, and the information or analysis of information has never been submitted as evidence or considered by the planning board at a hearing on the application, the governing body may:
    - Approve, conditionally approve, or deny the application without basing its decision on the new information if the governing body determines the information is either irrelevant or not credible; or
    - Direct the planning board to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed application.
  - iv. When a subsequent public hearing is required, the review period is suspended. The new hearing shall be noticed according to the applicable requirements of these regulations and be held within 45 days of the governing body's determination to schedule a new hearing.
  - v. The Administrator shall provide to the planning board a compilation of the new information, an addendum to the staff report that addresses only the new information, and any recommended changes to the planning board's previous recommendation and findings of fact resulting from the new information.
  - vi. The planning board shall consider only the new information, taking into consideration the staff report addendum and any comments and information received at the subsequent public hearing. Within 10 working days after the subsequent public hearing, the Administrator shall submit in writing to the applicant and governing body any changes to the materials required in Ch. IV-A(9)(c) above.

- vii. The governing body shall hold a public hearing after receiving the planning board's revised recommendation based on the new material submitted. Notice of the governing body hearing must be posted a minimum of 48 hours in advance of the hearing. The applicable review period resumes at the time of the scheduled hearing.
- e) Governing Body Consideration and Decision.
- i. The governing body's decision to approve, conditionally approve, or deny a proposed subdivision shall be based upon an evaluation of the subdivision application, preliminary plat, environmental assessment, staff report, findings of fact, public comment, planning board recommendation, and any additional information provided by the applicant. The requirements for approving, approving with conditions, or denying an application are specified in Chapter V and are the same criteria considered in the staff report and planning board recommendation.
- ii. When an applicant requests a variance, the governing body shall review the request for compliance with the variance criteria in Chapter VI, taking into consideration the written request submitted by the applicant, public comment received, planning board recommendation, staff report, findings of fact, and any additional information pertinent to the request. The governing body shall review and make a determination on the variance request prior to making a decision on the preliminary plat application.
- iii. The governing body shall provide record of their decision to the applicant, in writing pursuant to [76-3-504\(1\)\(r\), MCA](#), along with supporting materials to include the following:
- A summary of the decision to approve, approve with conditions, or deny the preliminary plat application, dated and with the appropriate signature of the governing body;
  - A list of the conditions that apply to preliminary plat approval that must be satisfied before the final plat may be approved, accompanied by written findings in support of reasonable mitigation required to address impacts;
  - The effective time period of the preliminary plat approval;
  - A summary of the decision to approve or deny any requested variances, including any proposed conditions for approval, and a statement describing the facts and conditions upon which the decision is based;
  - Information on the appeal process for denial or imposition of conditions;
  - Findings of fact and conclusions that the governing body weighed and relied upon in making its decision to deny or impose conditions and reference documents, testimony, or other materials that form the basis of the decision;
  - Identification of the regulations and statutes that were used in reaching the decision to deny or impose conditions that explains how they apply to the decision; and
  - A summary of all public comments related to water and sanitation that have not already been provided to the applicant, as well as written notice that the applicant is required to submit public

comments related to water and sanitation as part of the application for sanitation approval (pursuant to [76-3-604\(7\)\(b\), MCA](#)).

The Administrator shall compile the items listed above following the hearing or meeting in which the decision is made and submit the materials to the planning governing body chair for approval. Once approved, the Administrator shall send the package to the applicant within 30 days of the decision being made.

- a) Appeals
  - i. A person who has filed with the governing body an application for subdivision under these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or these regulations that is arbitrary, capricious, or unlawful (pursuant to [76-3-625\(1\), MCA](#)).
  - ii. A party as identified in [76-3-625\(3\), MCA](#), who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days from the date of the written decision, appeal to the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) District Court. The petition must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

## 11. Preliminary Plat Approval

- a) After the preliminary plat application is approved, the governing body may not impose any additional conditions as a prerequisite of final plat approval.
- b) The preliminary plat shall be in effect for no more than three calendar years, except as provided for phased developments approved under these regulations or unless the applicant and governing body have agreed to an extension.
  - i. At the request of the applicant the governing body may extend the preliminary plat approval period provided the extension meets the extension criteria in Chapter V, the applicant has submitted the request according to the requirements of Chapter VI, the, and the extension is granted prior to the termination of the original approval period. The governing body may agree to more than one extension.
  - ii. The final plat application must be submitted, approved, and filed with the clerk and recorder within the preliminary plat approval period.
  - iii. If the preliminary plat approval period expires, a new application shall be required.
- c) Phased Development.
  - i. The governing body may approve phased developments that extend beyond the maximum three-year preliminary approval period set forth in [76-3-610, MCA](#) in accordance with a phasing schedule proposed by the applicant. However, all individual phases must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body. Any phase not approved, conditionally approved, or denied within 20 years of the overall phased development preliminary approval shall be null and void.
  - ii. The applicant may change the phasing schedule upon approval of the governing body following a public hearing. The governing body may approve a proposed

change to the phasing schedule only if the change does not negate a condition of approval or otherwise adversely affect public health, safety, or welfare.

d) Restrictions on Transferring Title

- i. After the preliminary plat has been approved or conditionally approved but before final plat approval, the applicant may enter into contracts to sell lots in the proposed subdivision if the conditions of [76-3-303, MCA](#) have been met.
- ii. Except as provided in [76-3-303, MCA](#), every final plat must be filed for record with the clerk and recorder before title to the subdivided land can be sold or transferred in any manner. In the case of a subdivision creating spaces for rent or lease for recreational camping vehicles or mobile homes, no rent or lease may occur until the governing body grants final subdivision approval.
- iii. If unlawful transfers, rental or lease agreements are made, the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) Attorney shall commence action to enjoin further sales, transfers, or rent or leases and compel compliance with the Montana Subdivision and Platting Act and these regulations.

## 12. Subsequent Processes and Procedures for Phased Development

- a) Following approval of the overall phased development preliminary plat, the applicant shall provide written notice to the governing body through the Administrator of the intent to commence one or more phases. Along with the notice, the applicant shall submit an application form, preliminary plat, review fee, narrative describing the number and types of lots or units, deviations from the approved overall development plat (if any), and public improvements necessary to make that phase fully functional.
- b) The governing body shall hold a public hearing on each phase and/or a change to an approved phasing schedule within 30 working days of receipt of written notice from the applicant.
- c) Notice of the public hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The applicant, each property owner of record whose property is immediately adjoining the land included in the phase, and each purchaser under contract for deed of property immediately adjoining the land included in the phase must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing. Notices shall include the time, date, and location of the hearing; a description of the phase and overall phased development; a description of the property, and how additional information may be obtained.
- d) The Administrator shall draft a report evaluating the application submittal, surrounding conditions and circumstances, and propose findings on whether there are any changed primary review criteria impacts or if new information exists that creates new potentially significant adverse impacts. The Administrator shall submit the staff report to the governing body and applicant at least 15 working days prior to the public hearing.
- e) After the hearing, the governing body shall determine whether any changed primary review criteria or new information creates new and potentially significant adverse impacts for the phase or phases under consideration. Notwithstanding the provisions of [76-3-610\(2\), MCA](#) the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development.
- f) Any additional conditions must be met before final plat approval is granted for each phase of development. Preliminary approval for each phase shall be in force for not more than three calendar years (pursuant to [76-3-611, MCA](#)).

## IV-B FINAL PLAT APPLICATION AND REVIEW PROCESS

### 1. Final Plat Submittal

- a) Prior to submitting the final plat application, the applicant shall submit a draft of the final plat to the Administrator, who shall forward it to the examining land surveyor. The examining land surveyor shall review the plat for errors and omissions in calculation and drafting. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining land surveyor shall certify compliance in a printed or stamped certificate on the final plat; the stamped plat shall accompany the final plat application submittal.
- b) The final plat application including the stamped final plat, supplementary documents, and review fees, must be submitted to the Administrator at least 40 working days prior to the expiration of the preliminary plat approval period.
- c) The final plat application is considered to be received on the date of delivery to the Administrator when accompanied by all supplementary documents and review fees.

### 2. Application Review

- a) Within 20 working days of receipt of the final plat application, the Administrator shall determine whether the final plat conforms to the conditions of preliminary plat approval, the requirements of the Montana Subdivision and Platting Act and all applicable requirements of these regulations, and whether the county treasurer has certified all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.
- b) The Administrator shall notify the applicant in writing that the final plat application meets the requirements of Ch. IV-B(2)(a) above. If it is determined the final plat application does not meet the requirements of Ch. IV-B(2)(a), the Administrator shall identify the defects in the notification and provide a timeframe in which they must be addressed.
- c) The Administrator may review subsequent submissions of the final plat application only for information found to be deficient during the original review of the final plat application.
- d) If the Administrator determines the final plat and supplementary information differs materially from the approved or conditionally approved preliminary plat application, the Administrator shall review the changes according to Ch. IV-B(6)(c).
- e) The review period provided in Ch. IV-B(1)(b) above applies to each subsequent submission until a written determination is made that the final plat application contains the required information and the applicant or the applicant's agent is notified. However, the applicant or the applicant's agent and the Administrator may mutually agree to extend the review period at any time.
- f) After the final plat application is determined to meet the requirements of Ch. IV-B(2)(a) above, the Administrator shall prepare and distribute to the applicant and governing body a report documenting how the final plat meets each of the requirements.

### 3. Governing Body Review and Decision

- a) Within 20 working days of receipt of the report required in Ch. IV-B(2)(f), the governing body shall review the final plat application and decide whether to approve or deny the request.
- b) Governing body review and approval shall occur at a public meeting where public notice has been posted at least 48 hours in advance, and the Administrator has provided written notice to the applicant at least 10 working days prior to the meeting.
- c) If the final plat is approved, the governing body shall certify its approval on the face of the plat. When applicable, a certificate of the governing body's acceptance of any dedicated land, easements, or improvements shall be placed on the face of the final plat.

- d) If the final plat application is denied, the governing body shall return the final plat to the applicant within 30 days and provide a written statement that:
  - i. Includes information regarding the appeal process for denial of the application;
  - ii. Identifies the regulations and statutes that were used in reaching the decision to deny and explains how they apply to the decision;
  - iii. Provides the facts and conclusions that the governing body relied upon in making its decision to deny and references documents, testimony, or other materials that form the basis for the decision; and
  - iv. Provides the conditions that apply to the preliminary plat that must be satisfied before the final plat may be approved.
- e) The applicant may make any necessary corrections to the plat or take other steps necessary to conform to the conditional approval and resubmit the final plat application. The re-submittal must occur and the final plat must be approved within the original or extended preliminary plat approval period.

#### 4. Filing the Final Plat

- a) After receiving approval, the final plat may be filed with the clerk and recorder. The final plat may not be altered in any manner prior to filing.
- b) The clerk and recorder may not accept any plat for filing that does not bear the approval of the governing body in proper form or a plat that has been altered after final plat approval.
- c) The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Final Subdivision Plats.
- a) Should a plat require amendment, it is subject to the procedures for review of a minor or major subdivisions, unless the changes meet the requirements for corrections found in [76-3-614, MCA](#), or qualifies for an exemption as identified in Chapter II of these regulations.
  - i. The governing body may not approve an amended plat without written consent of the owners and lien-holders of all lots that will be modified by the proposed amendment.
  - ii. The plat to be filed shall clearly be labeled as an amended plat of the previously approved subdivision.